

### **The Legislation**

Section 22(4) of the *Employment and Assistance Act* (the “Act”) states that “a panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.”

This new section 22(4) broadens the scope of new evidence the Tribunal may admit from the previous wording of the legislation which only permitted new evidence to be admitted if it was in support of evidence contained in the appeal record.

When new evidence is admitted, the appeal is not strictly a review on the record below but rather a review on the basis of all admissible evidence. Accordingly, instead of asking whether the decision under appeal was reasonable at the time it was made, panels should ask themselves whether the decision under appeal was reasonable based on all admissible evidence, including any new evidence admitted under s. 22(4) of the Act.

### **Examples of New Evidence**

What new evidence might be reasonably required for a full and fair disclosure of all matters related to the decision under appeal? Generally speaking, new evidence will meet this test if it is relevant to the issue(s) on appeal. This includes evidence that may contradict evidence in the appeal record. Evidence that is not relevant to the issue is inadmissible.

Determining what is relevant depends on the facts of each case and the particular issue(s) on appeal.

#### Example 1:

The issue on appeal is whether the ministry reasonably denied the appellant’s application for a crisis supplement for a winter jacket. The Appellant had submitted copies of bank records showing a deficit balance and personal submissions explaining why they could not afford a new jacket without the assistance and explaining that their old jacket had deteriorated to the point it could no longer be worn. In the reconsideration decision the Ministry stated that the bank records did not show the Appellant’s monthly assistance cheque and held that accordingly, the Appellant had other funds available and did not meet the test for the crisis supplement. At the hearing the Appellant, brought in a letter from the Appellant’s landlord indicating that the Appellant’s rent was always paid in cash and was the total amount of the Appellant’s monthly social assistance. This new evidence ought to be admitted as new evidence as it is directly related to a fact at issue in the appeal (ie. Did the Appellant have other resources?)

Example 2:

Using the same fact pattern as above, instead of the letter from the landlord, the Appellant brings to the hearing a letter from their doctor, which diagnoses the Appellant with epilepsy and states that the Appellant has a medical condition that requires accommodation. This new evidence ought not to be admitted as it is not related to a fact at issue in the appeal and is instead an entirely different issue that was not considered in the reconsideration decision.